

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL RIVERA,  
Plaintiff,

v.

C.O.I J.O'HAIRE, et al.,  
Defendants.

No. 1:15-cv-1659

Hon. John E. Jones, III

FILED  
SCRANTON

DEC 01 2016

Per.   
DEPUTY CLERK

PLAINTIFF'S PRETRIAL MEMORANDUM

Pursuant to Middle District Local Rule 16.5, Plaintiff submits this pretrial memorandum and represents the following:

A. JURISDICTION

1. This is a civil action brought pursuant to 42 U.S.C. Section 1983. This honorable Court has jurisdiction under 28 U.S.C. Sections 1331 and 1343.

B. SUMMARY STATEMENT OF FACTS

2. On January 20, 2015, Plaintiff was restrained and handcuffed by Defendants O'Haire and Sromowski on block 'I' within SCI-Dallas, and escorted to the medical department. Upon entrance to the trauma room within the medical department, Defendant Bienkowski also entered the trauma room, and immediately

thereafter all three Defendants began punching, kicking, and kneeling Plaintiff in the head, face and body. After exhausting all administrative remedies available, Plaintiff filed a complaint in this matter on or about August 24, 2015. Defendants filed an answer on or about January 22, 2016.

Plaintiff contends that he sustained his injuries as a result of the assault he endured at the hands of the Defendants while subdued and handcuffed.

Defendants contend that Plaintiff's injuries occurred on the housing unit as a result of his own actions.

### C. COMPREHENSIVE STATEMENT OF UNDISPUTED FACTS

3. Plaintiff assaulted C.O. I R. Lewis on block 'I' within SCI- Dallas on January 20, 2015.

4. Defendants O'Haire and Sromovski responded to C.O. Lewis' assault and were partially responsible for subduing and handcuffing Plaintiff on block 'I'.

5. Defendants O'Haire and Sromovski then escorted Plaintiff to the medical department.

6. Upon entrance to the medical department, Defendants O'Haire and Sromovski led Plaintiff into the trauma room.

7. Upon entrance to the trauma room, Defendant Bienkowski immediately followed Defendants O'Haire and Sromovski into the trauma room, along with the Plaintiff.

8. All three Defendants then began punching, kicking and kneeling Plaintiff in the head, face and body in retaliation for Plaintiff's assault of C.O. Lewis minutes earlier.

9. This retaliatory assault lasted approximately two minutes.

10. Plaintiff was handcuffed behind his back the entire time.

11. Plaintiff suffered cuts to both eyebrows, the left of which required three stitches to close, as well as several other minor cuts to his wrists, a chipped front tooth, and numerous minor abrasions and contusions as a result of Defendants' actions.

12. Plaintiff also suffered pain as a result of the injuries he incurred.

13. Plaintiff had three stitches in his left eyebrow for approximately eight days, during which he continuously received pain medication for his injuries.

14. Plaintiff's chipped front tooth is irreparable and permanent.

15. Plaintiff has properly exhausted all administrative remedies available.

16. This matter is ready to proceed to trial.

#### D. BRIEF DESCRIPTION OF DAMAGES

17. Plaintiff requests \$100,000.00 in compensatory damages, jointly and severally.

18. Plaintiff requests \$100,000.00 in punitive damages, jointly and severally.

#### E. NAMES AND ADDRESSES OF WITNESSES

19. Mr. Caine Pelzer, D.O.C.# EZ2913, who is currently confined at SCI-Pine Grove.

20. Mr. Derrick Davis, D.O.C.# KM3839, who is currently confined at SCI-Dallas.

21. Mr. Vernell Morris, D.O.C.# CC2451, who is currently confined at SCI-Dallas.

22. Mr. Anthony Gardener, D.O.C.# CS6493, who is currently confined at SCI-Dallas.

23. Mr. Michael Rivera, D.O.C.# EW2442, who is currently confined at SCI-Fayette.

#### F. SUMMARY OF EACH WITNESSES TESTIMONY

24. For a summary of each witnesses testimony, see all of the declarations filed on August 1, 2016.

#### G. SPECIAL COMMENT ABOUT PLEADINGS AND DISCOVERY

25. Plaintiff has no special comment about pleadings and discovery.

## H. SUMMARY OF LEGAL ISSUES INVOLVED AND LEGAL AUTHORITIES RELIED UPON

26. Plaintiff's Eighth Amendment rights were violated when force was unnecessarily applied by Defendants while Plaintiff was subdued and handcuffed behind his back. See, Whitley v. Albers, 475 U.S. 312, 106 S.Ct. 1078 (1986).

## I. STIPULATIONS

27. Plaintiff is not requesting any stipulations.

## J. ESTIMATED NUMBER OF TRIAL DAYS

28. Plaintiff estimates two days.

## K. ANY OTHER PERTINENT MATTER

29. Plaintiff has no other pertinent matters.

## L. PRENUMBERED SCHEDULE OF EXHIBITS

30. Plaintiff resubmits the same listing of documents previously filed in the Pretrial Memorandum of August 1, 2016.

## M. SPECIAL VERDICT QUESTIONS

31. Plaintiff is not requesting any special verdict questions.

## N. SETTLEMENT AUTHORITY NOTIFICATION

32. Plaintiff believes this section does not apply to this matter.

## O. LOCAL RULE 30.10 CERTIFICATE

33. Plaintiff believes this section does not apply to this matter.

## P. LOCAL RULE 48.2 MEMORANDUM

34. Plaintiff believes this section does not apply to this matter.

## CONCLUSION

WHEREFORE, Plaintiff submits this Pretrial Memorandum as his best effort to meet the requirements of Local Rule 16.5, and respectfully requests that this matter be scheduled for jury selection and trial at the Court's convenience.

Date: November 28, 2016

Respectfully submitted,  
*Michael Rivera*

Michael Rivera

D.O.C.# EW2442

SCI-Fayette

Box 9999

LaBelle, PA 15450

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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No. 1:15-cv-1659

Hon. John E. Jones, III

CERTIFICATE OF SERVICE

I, Michael Rivera, pro se Plaintiff in the above-captioned matter, hereby certify that on November 28, 2016, I caused to be served a true and correct copy of the foregoing Plaintiff's Pretrial Memorandum to the following:

Via U.S. First Class Mail

Ms. Nicole J. Radziewicz,  
Deputy Attorney General  
Office of the Attorney General  
15th Floor, Strawberry Square  
Harrisburg, PA 17120

Respectfully submitted,  
*Michael Rivera*  
Michael Rivera  
D.O.C.# EW2442  
SCI-Fayette  
Box 9999  
LaBelle, PA 15450

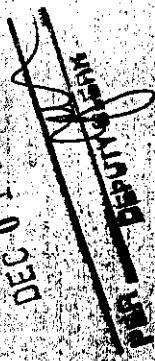
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Ms. Maria E. Elkins,  
Clerk of Court  
235 N. Washington Ave.  
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Scranton, PA 18501-1148